Association of State Prosecutors

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TO: **Members of the State Assembly**
FROM: **Association of State Prosecutors**
DATE: **March 7, 2007**
RE: **Opposition to SB60/AB121 Proposed Change in Standard for Admission of Expert Testimony**

The Association of State Prosecutors strongly opposes SB60/AB121. SB60/AB121 would change the standard for expert witnesses and have a negative impact on prosecutors' ability to successfully prosecute crimes, in particular cases of civil commitment of sexual predators, sexual assault cases and child abuse and domestic violence cases.

The Association of State Prosecutors respectfully asks you to oppose this legislation for the following reasons:

Current law is whether expert testimony is "helpful to the jury." This standard now allows the following types of testimony, which would be eliminated or severely limited under the proposed legislation:

1. Current law allows testimony in "behavior profile" cases – this is evidence that attempts to explain someone's conduct or reactions which is now admitted because it is relevant and helpful to the jury without analysis of whether the "science" that supports it is reliable. Crucial in sexual assault, child abuse, and domestic violence cases. Examples include Child Abuse Syndrome/Battered Woman's Syndrome in which the experts can now tell the jury they have reached a conclusion on these subjects, explaining for example a child victim's recantation of a molestation claim, or a victim's reluctance to come to court and testify against her domestic abuse.

2. Current law allows social workers and practitioners who actually work with sexual assault victims, or domestic violence victims, to testify to the above-listed syndromes and behavior by victims. This allows the prosecutor to use easier to find, inexpensive but compelling expert testimony that can be absolutely crucial to explaining a victim's conduct.

3. Current law allows expert testimony by police officer regarding the results of a field sobriety tests, or expert testimony on alcohol metabolism and extent of impairment resulting from alcohol consumption levels.

4. Current law allows expert to testify to otherwise "inadmissible" evidence in support of the expert's conclusion. Under 907.03 the expert may rely upon otherwise inadmissible evidence as long as experts in the field of a type regularly use it. This is especially important in Chapter 980 cases, which consist almost exclusively of expert testimony at trial, with experts being free to describe all of the factors they relied upon in coming to their conclusion about whether the offender is a sexually violent person. These include the offender's history, criminal records, treatment progress and interviews with the offender as well as other kinds of hearsay evidence. Almost all this information would be severely limited or eliminated under the proposed legislation. In addition, the field of evaluating sexually violent persons for their risk level is a new one, and there is very little agreement by the limited number of experts in the field as to what the "science" underlying their opinions might be. There would be extensive litigation on this issue.

5. Proposed legislation has been used in federal courts almost exclusively against the plaintiff. "Plaintiffs generally will want to avoid the Daubert burdens of federal courts; defendants will want to take advantage of them. That is for two reasons: 1) plaintiffs bear the burden of proof; and 2) the most vulnerable expert testimony is generally that of plaintiffs.... The federal courts have used Daubert almost exclusively against plaintiff's experts." WI Lawyer March 2000, Volume 73, No. 3: Guarding the Gates, by Robert M. Whitney. www.wisbar.org/wislawmag/2000/03/gates2.html. There is no reason to believe that the effect will be any different on prosecutors, who also bear the burden of proof and have the most vulnerable expert testimony. In fact, it will likely be worse as the defense in criminal cases has the "right to put on a case" and the judges may well err on the side of allowing in defense experts but not prosecution experts.

6. Change in the standards would require re-litigation in all cases for the testimony of experts commonly used today in our cases. Finger prints, ballistics, child sexual abuse accommodation syndrome, shaken baby, post traumatic stress disorder, actuarial risk assessment methodology etc. The list is endless. This would be time-consuming and would result in many appeals, which would also be very time-consuming and expensive in terms of time spent briefing and deciding the matters. It would take years to come to resolution on many of these expert admissibility issues.

7. The current system allows courts enough freedom to limit expert testimony that is not helpful to the jury in making its decision. Courts can use 907.02 and 907.03 to so limit the expert testimony.

Wisconsin Academy of Trial Lawyers
Keeping Wisconsin Families Safe
www.watl.org

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Testimony of Paul E. Sicula
on behalf of the
Wisconsin Academy of Trial Lawyers
before the
Assembly Courts and Corrections Committee
Rep. Garey Bies, Chair
on
2007 Assembly Bill 121
March 8, 2007

Good morning, Representative Bies and members of the Committee. My name is Paul E. Sicula, the legislative representative of the Wisconsin Academy of Trial Lawyers (Academy). On behalf of the Academy, I thank you for the opportunity to appear today to testify in opposition to Assembly Bill 121.

The Academy, established as a voluntary trial bar, is a non-profit corporation with approximately 1,000 members located throughout the state. The objectives and goals of the Academy are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

The Academy is devoted to advocating for the rights of the seriously injured in the State of Wisconsin. Its members are committed to insuring justice in the administration of tort law through the fair and efficient application of the Rules of Civil Procedure and the Rules of Evidence in Wisconsin courts. Assembly Bill 121 (AB 121) raises a serious issue with respect to the Rules of Evidence which is of great concern to members of the Academy and all those interested in

insuring that our courts are able to dispense justice efficiently and at a reasonable cost.

Wisconsin law stands firmly behind the principle of assisting the trier of fact and manifests abiding faith in the adversary system of justice. The admissibility of expert testimony in Wisconsin courts turns on three prime considerations: (1) the relevancy of the testimony, (2) the witness's qualifications, and (3) the helpfulness of the expert's testimony in determining a fact in issue. The "reliability" of the expert's evidence is itself an issue for the trier of fact and not a precondition of admissibility. Wisconsin judges, as "limited gatekeepers," have the power to exclude expert testimony when it is unhelpful or its probative value is substantially outweighed by other considerations. This relevancy-assistance standard has been used for twenty years.

AB 121 represents a sea change in the Wisconsin Rules of Evidence. Judges replace jurors in determining reliability of experts, becoming "gatekeepers" and "amateur scientists," triggering expensive, time-consuming, and confusing hearings on the admissibility of evidence.

Proponents raise the specter of "junk science" being introduced. What examples can the proponents of this legislation bring before Wisconsin's lawmakers of unreliable "junk science" that has been embraced by a Wisconsin jury when reaching its ultimate verdict? Those advocating for change in the evidentiary rules governing expert testimony have the burden of demonstrating a compelling need for such change and the superiority of proposed new measures. Further, they have a responsibility to convincingly explain why the legislative process, rather than the judicial rule making process, should be the forum for the consideration of these proposed changes.

Proponents have failed to meet their burden. We urge Representatives to reject AB 121 for the following reasons:

1. Its proponents have presented no evidence that Wisconsin's existing rules governing the admissibility of expert testimony, which are the product of 150 years of considered jurisprudence in this state, produce unfair or illogical results. If it isn't broke, don't try to fix it!!
2. Requests for change in evidentiary rules should be addressed by the Wisconsin Supreme Court under its rule-making authority, as they have in the past. As a separate and co-equal branch of government, the

judicial branch is charged with implementing the Rules of Evidence. Because they are supposed to be neutral in their application and impact, evidentiary rules are appropriately considered and established by the courts. They should not be politicized or become a proxy for so-called tort "reform."

3. Wisconsin courts have wisely considered and rejected the so-called *Daubert* standard [*Daubert v. Merrell Dow Pharmaceuticals,* 509 U.S. 579, 125 L.Ed.2d 469, 113 S.Ct. 2786 (1993)] adopted by the federal courts for determining the admissibility of expert testimony. Far from leading to greater efficiency and less expense, the federal approach has spawned days-long mini-trials on the admissibility of expert testimony, absorbing precious judicial resources and significantly increasing the cost of litigation.

4. All aspects of the legal system will be affected by this change. Criminal trials regularly use physicians, DNA analysts, and terminal ballistics specialists. Psychologists and social workers also regularly lecture juries on how sexual assault or physical abuse affects victims, defendants, and witnesses. While this measure seems targeted to personal injury lawsuits, commercial cases, environmental and family law all feature experts and will be impacted.

There are no discernable problems or anomalies that warrant wholesale reconsideration of a standard that has worked well for several decades. The standard for the admissibility of expert testimony in Wisconsin has worked effectively because it places the final determination of reliability where it belongs: in the hands of a jury of 12 impartial citizens as required by our State and Federal Constitutions.

The Wisconsin Academy of Trial Lawyers urges you to oppose AB 121.

WMC
REPRESENTING WISCONSIN BUSINESS

Wisconsin Manufacturers & Commerce

Wisconsin Manufacturers' Association • 1911
Wisconsin Council of Safety • 1923
Wisconsin State Chamber of Commerce • 1929

James S. Haney
President

James A. Buchen
Vice President
Government Relations

James R. Morgan
Vice President
Marketing & Membership

Michael R. Shoys
Vice President
Administration

TO: Members of the Assembly Corrections and the Courts Committee

FROM: James A. Buchen, Vice President, Government Relations

DATE: March 8, 2007

RE: Support AB 121 – Standards for Expert Witnesses

Background
Current law allows the testimony of an expert witness if that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact at issue in the case. Currently, the facts or data in a particular case on which an expert witness bases his or her opinion may be made known to the expert at or before the case hearing, but if those facts or data are reasonably relied upon by experts in the field in forming opinions about the subject, they do not need to be admissible into evidence in the case.

Under current law, if a witness is not testifying as an expert, the witness's testimony is limited to those opinions that are rationally based on the perception of the witness and helpful to a clear understanding of the witness's testimony or of a fact at issue in the case.

2007 Assembly Bill 121
This bill limits the testimony of an expert witness to testimony that is based on sufficient facts or data, that is the product of reliable principals and methods, and that is based on the witness applying those principals and methods to the facts of the case. The bill also prohibits the testimony of an expert witness who is entitled to receive any compensation contingent on the outcome of the case.

This bill adds that facts or data that are otherwise inadmissible may not be disclosed to the jury unless the court determines that their value in assisting the jury to evaluate the expert's testimony outweighs their prejudicial effect. This bill adds the additional limit that a nonexpert's testimony may not be based on scientific, technical, or other specialized knowledge of the witness.

WMC Position - Support
WMC supports clearer standards to be applied to expert testimony in court proceedings. Both plaintiffs and defendants should be required to introduce well qualified experts in court proceedings to insure that higher quality analysis is provided to juries in determining complex matters. This legislation would adopt fair standards in Wisconsin that are already used in the Federal courts and the courts in thirty-seven other states.

For these reasons Wisconsin Manufactures and Commerce urges the Committee to vote in **support** of AB 121.

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Opposing AB 121, Evidence of Lay and Expert Witnesses
Before the Assembly Committee on Corrections and Courts
Testimony by Caryl Terrell, LWVWI Legislative Committee
March 8, 2007

The League of Women Voters of Wisconsin promotes an open governmental system that is representative, accountable and responsive. Active citizens play an essential role in this government structure. We value protecting citizen's right to know and facilitating citizen participation in government decision making and the judicial system. The bill before you today works against these goals.

AB 121 limits evidence of lay and expert witnesses by unnecessarily restricting testimony in science and technical based court cases. AB 121 has a chilling impact, intimidating public testimony.

By barring valuable layperson testimony, AB 121 discredits the specialized experiences and knowledge of our citizens. Documented observations, surveys and trends analysis by a layperson should continue to be welcomed by the courts. They often provide the local context for scientific knowledge. Informed lay testimony can be very valuable to decision-makers and should not be barred.

There is no justification for departing from traditional procedure. Under existing procedures, opposing counsel is already able to discredit testimony that is on the fringe of what is considered mainstream research or experience.

AB 121 would also prohibit courts from hearing evidence arising out of emerging sciences. Informed lay testimony can be especially valuable in such cases.

The League urges the Committee on Corrections and Courts to oppose AB 121.

STATE BAR of WISCONSIN®

WISCONSIN LAWYERS
EXPERT ADVISERS.
SERVING YOU.

MEMORANDUM

To: Members of the Assembly Committee on Corrections and the Courts

From: State Bar of Wisconsin

Date: March 8, 2007

Re: Assembly Bill 121, relating to evidence of lay and expert witnesses-OPPOSE

The State Bar of Wisconsin urges you to **oppose** Assembly Bill 121, changing the Wisconsin Rules of Evidence to mirror the Federal Rules of Evidence.

Under state law, expert witness testimony is generally admissible if: (1) it is relevant (2) the witness is qualified as an expert and (3) the evidence will assist the jury in determining an issue of fact. The reliability of the evidence is a weight and credibility issue for the jury, and any reliability challenges are made through cross-examination or other means of impeachment.

By contrast, our federal trial courts assume a significant "gatekeeper" function in keeping from the jury scientific evidence that they determine is not reliable. The federal evidentiary reliability standard requires trial judges to become amateur scientists to rule on the admissibility of expert witness testimony. It demands an understanding by judges of the principles and methods that underlie scientific studies and the reasoning on which expert evidence is based. This is a task for which few judges are adequately prepared without a background in the sciences.

While Wisconsin courts do not make a direct determination as to the reliability of the scientific principles on which the evidence is based, they do play a limited gatekeeper function. Under state law, our courts may exclude relevant evidence on the grounds of prejudice, confusion or waste of time.

There is no evidence of a problem in Wisconsin with so-called "junk science." Injecting the federal rules on expert witness testimony into our state court system could have a profound impact on many areas of practice including family, environmental, labor and litigation. It also may dramatically affect criminal prosecutions. State prosecutors may find it more difficult to introduce testimony relying on the disciplines of psychiatry, DNA testing, fingerprinting and forensics.

Instituting the federal rules may also impair the efficient administration of justice and consume valuable judicial time and resources. Inevitably, Assembly Bill 121 would make trials more time-consuming and expensive, a serious consideration in light of the state's tough budget times and an uncertain economy.

The State Bar of Wisconsin believes the wide-ranging implications of this legislation are best weighed by our Wisconsin Supreme Court through its rule-making process. Our state's highest court, to which our state constitution gives superintending and administrative authority over all state courts, is the appropriate forum for considering the wisdom of following the present federal rules on experts or some other variant.

For these reasons, the State Bar of Wisconsin urges members of the committee to oppose AB 121.

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If you have any questions, please feel free to contact Lisa Roys, Public Affairs Director for the State Bar of Wisconsin, at (608) 250-6128.

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TED KANAVAS
STATE SENATOR

Testimony on Assembly Bill 121
Thursday, March 8, 2007
Assembly Committee on Corrections and the Courts

Chairman Bies and members of the Assembly Committee on Corrections and the Courts, I greatly appreciate the opportunity to submit testimony in support of Assembly Bill 121 (AB 121), which relates to evidence of lay and expert witnesses. I have a companion bill to Representative Suder's moving through the process in the Senate.

This legislation is based on the U.S. Supreme Court *Daubert* decision. It says that testimony must be based on scientific data and a product of reliable principles and methods.

Currently, Wisconsin State Courts have lax rules regarding the admissibility of expert testimony. AB 121 will ensure that our State courts follow the same guidelines for admitting expert testimony that are used in 33 states and federal courts, including those federal courts sitting in Madison, Milwaukee and Green Bay by adopting Federal Rules of Evidence 701, 702 and 703.

AB 121 will guaranty that any expert opinion testimony admitted into evidence in a Wisconsin state court is a product of a reliable and sound analytical method, in addition to being proffered by a genuine expert in his or her field. Moreover, by adopting this standard, this bill will prevent forum shopping, and the commensurate overburdening of state courts with cases based on "junk science" that cannot pass muster in Federal Court.

Passage of this bill will put Wisconsin in line with both federal courts and the vast majority of state courts in determining appropriate expert testimony in civil litigation.

Again, thank you for your consideration of this very important piece of legislation. This legislation is part of my economic development agenda, Invest Wisconsin 2.0. I therefore ask for your support of AB 121.

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Wisconsin Coalition for Civil Justice

TO: Members, Assembly Committee on Corrections & Courts
FROM: Jim Hough, Legislative Director & Bill Smith, President

DATE: March 8, 2007

RE **Support for AB 121**

The Wisconsin Coalition for Civil Justice (WCCJ) has been at the forefront of seeking civil justice reform since the mid 1980's. The Coalition's broad based membership has as its goals a fair and equitable civil justice system in which "neither side" is advantaged by the "rules of the game" and a system that maximizes the ability to find the truth and resolve factual disputes.

Assembly Bill 121 is excellent legislation that fits into those goals and also brings Wisconsin in line with the federal system and the vast majority of states. This "common sense" expert opinion evidence bill will ensure that testimony admitted into evidence in Wisconsin will be credible and reliable; will be based on sound principles and methods; and will be presented by a true expert in his/her field.

The following are key points in support of passage of AB121:

- The standards incorporated in the bill are in effect in the entire federal system and 33 states.
- Expert opinion admitted into evidence under this bill would be reliable and based on a sound, analytical method.
- Such evidence would be required to be presented by a genuine expert.
- Adoption of this bill will prevent forum shopping; i.e. will discourage cases of questionable merit from being brought in Wisconsin because of weaker expert opinion evidence standards.
- Adoption of this bill will help to prevent overburdening Wisconsin state courts with cases based on "junk science."

WCCJ respectfully urges support for passage of AB 121.

SIERRA CLUB
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John Muir Chapter

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Testimony before the Assembly Committee on Corrections and Courts
Carla Klein, Chapter Director, Sierra Club – John Muir Chapter
OPPOSE AB 121

AB 121 Unfairly Limits Lay Testimony that Could Protect Clean Air and Water, Human Health and Safety, and Property Values

Expert Testimony:

By barring valuable layperson testimony, AB 121 discredits the specialized experiences and knowledge of Wisconsin citizens. There is no justification for this departure from traditional procedures, since under existing procedures opposing counsel are already able to discredit expert testimony that is on the fringe of what is considered mainstream research or experience.

AB 121 would also deter community involvement in administrative hearings that involve the public interest. Citizens often testify at these hearings about the localized impacts of a particular project, but AB 121 allows lawyers an opportunity to make continual objections to the citizen testimony. Not only will this serve to chill civic involvement, it will also add additional layers to administrative and court proceedings thus driving up the costs for everyone involved, including the agencies and courts.

The Sierra Club urges the Assembly Committee on Corrections and Courts to vote in opposition to AB 121.

Respectfully Submitted,

Carla Klein

Carla Klein, Chapter Director
Wisconsin Sierra Club

WISCONSIN ECONOMIC DEVELOPMENT ASSOCIATION

TO: Members, Assembly Committee on Corrections & Courts

FROM: WEDA Board of Directors
Andy Lisak, President & Peter Thillman, James Otterstein,
Rob Kleman, Legislative Co-Chairs
Jim Hough, Legislative Director

DATE: March 8, 2007

RE: **Support for AB 121**

The Wisconsin Economic Development Association (WEDA) is a statewide association of approximately 400 economic development professionals whose primary focus is the support of policies that create a climate conducive to the retention, expansion and attraction of businesses in and to Wisconsin.

A state's liability system has a significant impact on its economic development. Economic growth is greatly affected by the kind of legal environment in which businesses must operate. Our litigation atmosphere in Wisconsin has diminished in recent years due, in part, to failure to enact changes such as those embodied in AB 121.

For those reasons, WEDA continues its long advocacy of civil justice reform that establishes a framework for resolving disputes that is fair to all litigants and discourages frivolous and costly litigation that is aimed at "finding someone to pay" rather than fairly finding the truth.

Wisconsin is currently among a distinct minority of states which do not require expert testimony to be reliable. This has led to some high profile cases being brought in Wisconsin because of the increased likelihood of obtaining a favorable verdict through the use of "junk science" and/or questionable "expert" credentials. This does not help our desire to promote a positive legal environment.

Assembly Bill 121 would correct this problem by joining the majority of the states in this country and the entire federal system in ensuring that expert testimony is the product of a reliable and sound analytical method and offered by a genuine expert in his or her field.

WEDA strongly supports AB 121 and respectfully urges recommendation for passage.

TO: Members, Assembly Committee on Corrections and Courts

FROM: CTCW Board of Directors
John Slein, President, & Mike Crooks, Immediate Past-President–
Jim Hough, Legislative Director

DATE: March 8, 2007

RE: **Support for AB 121**

The Civil Trial Counsel of Wisconsin (CTCW) is a statewide association of trial lawyers who specialize in the defense of civil litigation. CTCW members are strong believers in our civil just system and support legislation and changes in that system only where those changes promote fairness and equity.

Assembly Bill 121 is extremely important legislation that would achieve both fairness and equity for Wisconsin litigants. In 1993, the United States Supreme Court issued a monumental decision in the case of *Daubert v. Merrell Dow Pharmaceuticals.* The *Daubert* standards/principles articulated by the Court put an end to unreliable, unfounded expert testimony in the federal courts, and, subsequently, the courts of 33 states.

Unfortunately and ironically, Wisconsin is not among the states that have embraced and adopted the *Daubert* standards for expert opinion evidence. Unfortunate, because "expert opinion evidence" and "experts" in Wisconsin are not guaranteed to be either accurate or legitimate. Ironic, because Wisconsin's rules of procedure and evidence are based substantially on the federal rules. In fact, Wisconsin was the first state to adopt a Code of Evidence, based on the then "proposed" federal rules.

To insure fair and equitable trials and results, Wisconsin deserves no less than the standards articulated in *Daubert* and embodied in AB 121 that: 1) testimony be based on sufficient facts and data; 2) such testimony is a product of reliable principles and methods; and, 3) the principles and methods can be properly applied to the facts of the case.

CTCW respectfully urges you to recommend passage of AB 121.

A Division of the Wisconsin Federation of Cooperatives

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Statement on AB 121

David Jenkins, Electric Division Manager
Wisconsin Federation of Cooperatives

March 8, 2007

Assembly Committee on Corrections and Courts

Mr. Chairman and Members:

Our association represents Wisconsin's 24 consumer-owned electric cooperatives serving nearly 10% of the state's retail electric customers.

We strongly support AB 121 and thank Rep. Suder and the other representatives and senators who co-sponsored this legislation.

Junk science is raising the cost of delivering electric power to our members.

According to our insurance company, Federated Rural Electric Insurance Exchange, which is a company electric cooperatives across the country own, their costs of defending stray voltage lawsuits—which usually end up with no finding of liability on the part of our members—is $2,000,000 a year.

At the heart of these lawsuits is always "expert testimony" by consultants who, in my opinion, do not in any manner prepare their testimony according to scientific principles or methods. This is costing our nearly 240,000 consumer-owners money in the form of higher electric rates.

We must stop this abuse of the judicial system.

Why are the State Bar and the Academy of Trial Lawyers afraid of using scientific principles and methods in our courts? Why do they oppose the provision in this bill that would prohibit witnesses from being compensated based on the outcome of the case?

We urge the committee to again pass this legislation. It is fair to both parties in cases and will professionalize our judicial process.

earth watch

Navy ELF shutdown continues 36 years of fraud

John LaForge
Reader Weekly

Last Friday, three decades of anti-nuclear activism suddenly came to an end when the Navy Office of Space and Navy Warfare Systems Command announced that on Sept. 30 it will shut down and proceed to permanently dismantle its two extremely low frequency (ELF) submarine transmitters — one near Clam Lake, Wisconsin and the other near Republic, Michigan. The Navy said in a press release the twin transmitters are "outdated and no longer needed." The shut-down notice came as a complete surprise, since two years ago Navy PR representative Richard Williamson said in Wisconsin that the system would be necessary for another 25 years.

For more than 30 years, since it first began test operations in 1968, a wide range of anti-war and environmental organizations, the general public, a Federal District Court judge, and even the Wisconsin and Michigan Congressional delegations have worked to prevent, restrict and finally to cancel the one-way "bell ringer" as the Navy called it.

Since 1991 and the collapse of the USSR, 639 trespass citations have been issued to activists who converged on the site 58 times over 13 years. Over 40 nuclear weapons resisters who refused to pay court-ordered fines have been incarcerated in county jails or— since the charges went federal in 2001— in federal joints. Five times since 1984, ELF's antenna poles were cut down by Plowshares disarmament activists all of whom endured long prison sentences. (In one hard-won exception in 1996, Donna Howard and Tom Hastings were found not guilty of sabotage when an Ashland County jury found that the Tridents can't be used defensively but only in an offensive war-waging manner.)

Altogether, more than nine years of incarceration have been served by nuclear resisters who acted against ELF. Even now, another 20 trespass defendants are facing trial in Madison for line-crossing actions at the site May 16 and August 8. An assistant U.S. attorney in Madison said Sept. 20 he didn't see why the prosecutions should not go ahead.

Why all the protest? Because the system was built to wage suicidal atomic violence with the Trident submarine's H-bombs. The Trident's weapons are 38-times the power of the bomb used on Hiroshima in 1945. Since 140,000 people were incinerated at Hiroshima, the Trident warheads can potentially murder more than 5 million people at one blow. Never mind that the Navy's 14 Tridents each carry 24 missiles, and that each missile carries up to eight of these unspeakably terrifying weapons.

What the ELF transmitter did— sending signals deep into the ocean— was allow the Tridents to get up close to the Target-of-the-Day, be it Cuba, Korea, Iran, Libya or Iraq, to stay deep enough to elude detection and still receive orders. The object was to reduce launch-to-target flight time and thereby increase missile accuracy. The only reason to prefer an accurate hit with a mountain-busting 475-kiloton warhead (the Hiroshima bomb was 12.5 kilotons) is to rip off a sneak attack or "first-strike" against missile sites, bombers or command centers. Never mind that this program was the polar opposite of the 'deterrence' it was said to be a part of, and that a first-strike is exactly what deterrence is supposed to prevent.

ELF justification cannot stand scrutiny

Although anti-war and anti-nuclear weapons activists are celebrating the successful end of a long-term campaign against this nuclear war "trigger," the announcement raised more questions than it answers.

The rationale presented by the Navy in its shutdown notice is suspect. "Improvements in communications technology and the changing requirements of today's Navy" make ELF obsolete, the Navy said. This is something opponents have said for over 25 years. The Navy said communications with the subs will now be done with "12 very low frequency (VLF) transmitters located around the world." But VLF is no improvement in technology and has been around since the 1970s.

In his 1983 book First Strike, Bob Aldridge notes that VLF stations were set around the world in a "Fleet Broadcasting System" for submarine communications" even then. Flying broadcasts to subs were also done with planes called "Tacamo" that reeled out a 5-1/2-mile long trailing antenna for VLF communications. In 1983 there were 18 of these planes and two of them were airborne all the time, one over the Atlantic and one over the Pacific.

The "changing requirements of today's Navy" are nothing new either. The collapse of the cold war and the dissolution of the USSR eliminated the Navy's "deterrence" cover story more than 14 years ago.

Indeed, long before the fall of the Berlin Wall, Navy admirals testified that ELF was unnecessary. In 1978, Admiral Hyman G. Rickover said in National Defense magazine that despite the 1,500 sixty-day patrols that had been carried out by the 41 Polaris [and Poseidon] submarines since 1960, the Soviet Union had not detected even one of them.

In 1981, Admiral Thomas B. Hayward, then Chief of Naval Operations, testified to the House Armed Services Committee that "no threat has emerged that causes us concern about our SSBN [nuclear-powered ballistic missile submarine] force. And therefore it is not essential to press on with ELF at the present time."

In that same year, then Navy Secretary John F. Lehman recommended to Pentagon chief Casper Weinberger that ELF be shelved.

Rear Admiral Raymond G. Jones Jr., then Deputy Assistant Chief of Naval Operations for Undersea Warfare, testified on June 7, 1991 that, "the Soviets do not currently threaten U.S. SSBNs [ballistic missile sibs] in the open ocean, nor do we see indications of a future threat."

More recently, in January 1993, then Pentagon chief Dick Cheney said, "The ability of the SSBN force to remain virtually undetected at sea makes it the most survivable and enduring element of the U.S. nuclear force structure."

None of this official nay saying stopped the system for long. The threat that the ELF transmitter's electromagnetic radiation might cause brain cancers, leukemia, reproductive disorders and other illnesses did slow the system down for a while.

In 1984, Federal Judge Barbara Crabb ruled against the Navy in Wisconsin v. Weinberger. In her 72-page injunction which halted construction of the ELF system, Crabb said the Navy was in violation of the National Environmental Policy Act (NEPA) because it ignored studies showing human health hazards from ELF's electromagnetic radiation. The case was the culmination of years of work by the original Stop Project ELF. But Crabb's injunction was vacated on appeal to the 7th U.S. Circuit Court of Appeals, which said the supposed Soviet threat was more tangible than the threat of cancer from ELF waves. A blistering dissenting opinion reminded the majority that the NEPA has no national security exemption, so the majority opinion itself violated the NEPA. The appeals court order allowed ELF to be built without ever answering the health questions raised by Judge Crabb's injunction.

John Stauber, co-founded the original Stop Project ELF which helped convince Wisconsin's attorney general to sue the Navy under NEPA. The Appeals Court reversal was a heavy hit. "We had essentially exhausted all legal remedies," he told the Milwaukee Journal Sentinel. "That's why it became such a focus for nonviolent protest, and many people have gone to jail for quite a while over the last 20 years."

It would be interesting to learn the Navy's actual reasons for stopping Project ELF. The Navy might still be afraid of liability over ELF's electromagnetic radiation and its power to promote or cause health problems around the transmitter. It may be worried about the Lac Courte Oreilles Tribe's investigation into health concerns which began in Hayward, Wisconsin two years ago.

John Heid, of the anti-war Anathoth Community near Luck, Wisconsin, who along with this reporter served 60 days in Ashland County jail in 2001, said of the announcement, "Today ELF, tomorrow Trident."

Taking the long view, Jane Hosking, also at Anathoth, who was jailed for 60 days in 1998 and again in 2003, said, "We still have a few issues to work out with U.S. nuclear weapons policy — like disarmament and clean-up."

John LaForge is codirector of Nukewatch, which is a part of the Coalition to Stop Project ELF.

Campaigners with the Coalition to Stop Project ELF invite the public to gather at the Clam Lake site all day Sept. 30 to observe the shutdown. A celebration will commence at 2 p.m. For information call 715-472-4185.

WISCONSIN CHRONIC FATIGUE SYNDROME ASSOCIATION INITIATED COLLABORATIVE STUDY: THE EFFECTS OF REDUCING ELECTRICAL POLLUTION ON SYMPTOM SEVERITY IN CHRONIC FATIGUE SYNDROME/FIBROMYALGIA PATIENTS, A PRELIMINARY VIEW.

MODERATOR: Alfred Meyer, Executive Director, Physicians for Social Responsibility – Madison

PRESENTERS: Marilyn Wilson, Chair, Medical Advocacy Wis. CFS Assoc.; David Stetzer, President, Stetzer Electric; Dan Muller M.D., Ph. D., Rheumatology, School of Medicine, UW – Madison; Art Hughes, Ph. D., Electrical Engineer.

OVERVIEW: Symptoms of chronic fatigue syndrome overlap symptoms of electrical injury and over exposure to high frequencies. The presence of high frequencies riding on the standard 60 Hertz sine wave (sometimes referred to as poor power quality or "dirty" power) is well documented. People exposed to high frequencies through capacitive and inductive coupling to electrical wiring in the walls, floors, and ceiling of buildings, experience CFS-like symptoms.

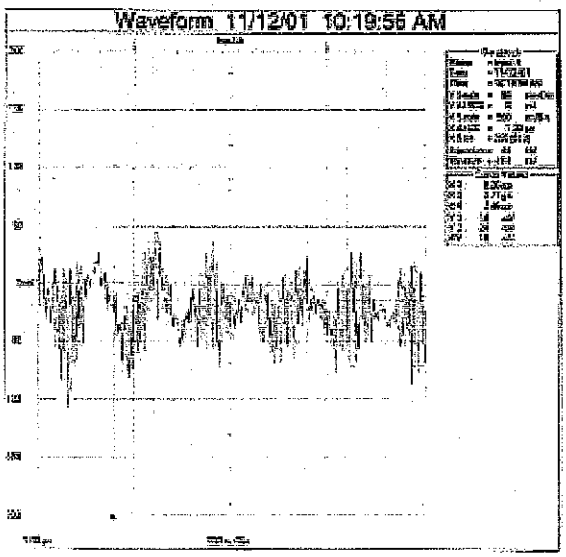
The Wisconsin CFS Association, UW Medical School and Stetzer Electric worked collaboratively on a pilot double-blind study. Levels of high frequencies on the home wiring of 20 housebound CFS patients were reduced using an electrical filtering device. Significant positive results showed a reduction in symptom severity.

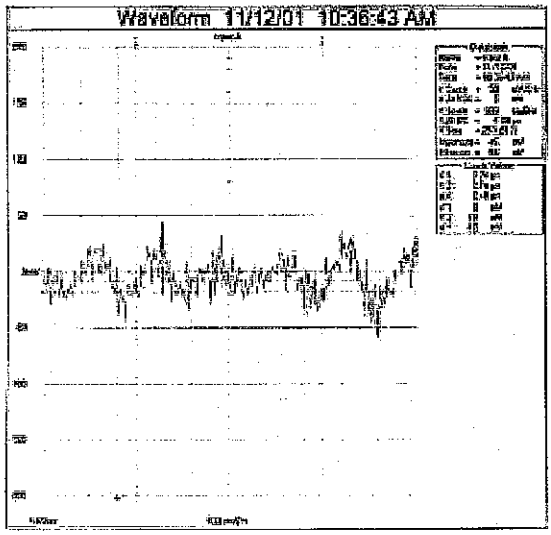
METHODS: In the double blind crossover study, levels of high frequency on home wiring of 20 housebound CFS patients were reduced using electrical filters similar to those used in industry to enhance power quality. The following surveys were administered during the 4 week study period: SCL-90, SCL-90 PST, POMS TMD, FIQ, PSS, and PANAS NA. The preliminary results suggest that reduction of exposure to high frequencies reduce CFS symptoms.

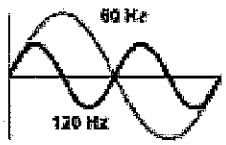
CONTINUATION EFFORTS: Identify suitable CFS/FM candidates that can provide measurement and monitoring information when filters are installed. Monitor, record and report both environmental electromagnetic levels and changes. Monitor, record and report the health and wellness levels using quantifiable markers.

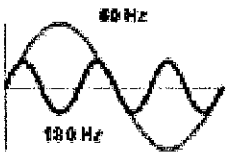
CONTACT INFORMATION: For further information relative to this study, please contact the Wisconsin CFS Association, 747 Lois Drive, Sun Prairie, WI 53590. www.wicfs-me.org Phone: 608-834-1001.

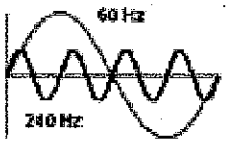
WISCONSIN CFS UW STUDY WAVEFORMS

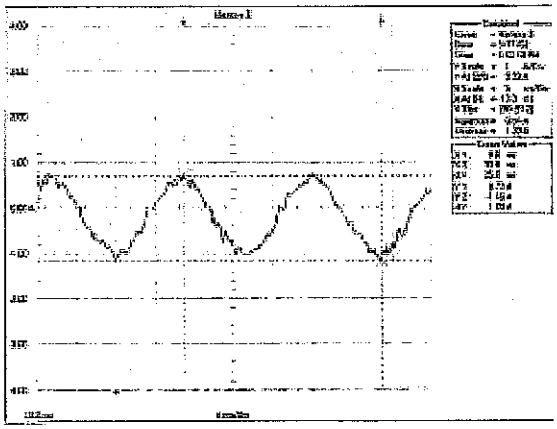












~The top left waveforms were collected at the home of a UW study participant, showing high frequencies riding on the 60 Hz sine wave before the intervention.

~The top right waveforms were collected at the same home of the UW study participant minutes after the study capacitors were turned on, reducing the high frequencies entering the home.

~The 4 bottom left waveforms each show a comparison between a clean 60 Hz sine wave with various levels of harmonics.

~The bottom right shows amperage waveforms collected from the water pipes at the home of the same study participant. This means the person is exposed to this electrical current each time using any water source from the home.